

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Ben Franklin Post Office  
Ben Franklin, Texas

Docket No. A2011-24

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

September 23, 2011

I. INTRODUCTION AND BACKGROUND

On July 15, 2011, the Postal Regulatory Commission (Commission) docketed the Petition For Review of the closing of the Ben Franklin Post Office (Ben Franklin), located in Ben Franklin, Texas.<sup>1</sup> On July 19, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>2</sup> Thereafter, on July 27, 2011, the Postal Service filed an electronic version of the Administrative Record concerning its Final Determination to Close the Ben Franklin, TX Post Office, Postal Service Docket Number 1354618-75415.<sup>3</sup> On August 1, 2011, the Postal Service electronically supplanted its

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<sup>1</sup> Petition for Review, received from Barry and Julie Lovell (Petitioners) regarding Ben Franklin, TX Post Office, filed July 15, 2011. Subsequently, 19 letters, with the exact same content as the original petition, were signed and filed by 21 Ben Franklin customers, July 18 and 19, 2011.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 19, 2011 (Order No. 765).

<sup>3</sup> United States Postal Service Notice of Filing of Administrative Record, July 27, 2011.

July 27, 2011, filing with a Notice of Filing Corrected Administrative Record -- Errata.<sup>4</sup> The Postal Service filed comments supporting its closure determination on September 8, 2011, in lieu of a legal brief.<sup>5</sup> On August 19, 2011, Petitioner Julie Lovell filed a Participant Statement.<sup>6</sup>

## II. STATEMENT OF FACTS

Ben Franklin is described by the Postal Service in its Final Determination as an EAS-11 level post office located in Ben Franklin, Texas, a part of Delta County, Texas. AR Item No. 1. Before closure, Ben Franklin had 96 post office boxes, providing service to 63 post office box customers, 36 rural intermediate box customers, and earned less than 2 hours of workload, daily. *Id.* Ben Franklin's postmaster vacancy has existed since February 13, 2010, when its postmaster was promoted. *Id.*

On December 3, 2010, the Manager of Post Office Operations requested permission to investigate the possible closure of Ben Franklin. AR Item No. 1. The request was granted. *Id.*

On January 27, 2011, the Postal Service notified Ben Franklin's customers of a "possible change in the way [their] postal service is provided." AR Item No. 21 at 1. As described in the posted notice, customers were given the option of receiving pickup and delivery, post office box, retail, and rural route service from the Roxton Post Office (Roxton) located 5.4 miles away. AR Item No. 21, at 1. The Postal Service also informed customers that retail and post office box services were available at the Pecan Gap Post Office, located 5.3 hours away. *Id.* The post office boxes rates at both the Roxton and Pecan Gap locations are lower than the box rates at Ben Franklin. AR Item No. 15, at 2. Included with the posted notice was a questionnaire customers were

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<sup>4</sup> United States Postal Service Notice of Filing Corrected Administrative Record -- Errata, August 1, 2011 (AR).

<sup>5</sup> United States Postal Service Comments Regarding Appeal (Postal Comments), September 8, 2011.

<sup>6</sup> Participant Statement from Julie Lovell (Participant Statement), August 19, 2011.

asked to complete and return by February 23, 2011. *Id.* In addition, customers were invited to attend a public meeting on February 23, 2011, from 3:00 p.m., until 4:00 p.m., at which Postal Service representatives would be available to answer questions and provide information about postal services, and patrons could express their thoughts and concerns about the potential change in service. *Id.*; Item No. 26

Of the 99 questionnaires distributed by the Postal Service, 39 were completed and returned: 2 responded favorably to the proposal; 20 expressed opposition or concern; and 17 expressed no opinion. AR Item No. 23, at 1. As posted, the public meeting was held on February 13, 2011, as scheduled, with 19 customers in attendance.<sup>7</sup> AR Item No. 24, at 1.

A formal discontinuance proposal (Proposal) to close Ben Franklin was forwarded to Ben Franklin for posting for a period of 60 days, February 23, 2011 through May 31, 2011. AR Item No. 31.<sup>8</sup> An invitation to file comments was posted in Ben Franklin, yet no comments were received during the posting period that ended June 9, 2011. *Id.*

On July 1, 2011, the Final Determination to close Ben Franklin was approved by the Vice President of Delivery and Post Office Operations. AR Item No. 47, at 8. The decision was based on: (1) the postmaster vacancy (2) a minimal workload, low office revenue; (3) the delivery and retail options (including the convenience of rural delivery and retail service) available from Roxton and Pecan Gap, both located approximately 5 miles away; (4) very little recent growth in the area (4) and estimated annual savings to the Postal Service of approximately \$35,901. AR Item No. 18 at 1; Item No. 47, at 2-8; Postal Service Comments at 3. In the Final Determination, the Postal Service considered and responded to various concerns expressed by postal customers during the March February 23, 2011, public meeting. AR Item No. 47, at 2-5.

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<sup>7</sup> Though in the Administrative Record, the Postal Service's sign-in sheet states "0" customers present at the February 23, 2011, public meeting, below are 19 individuals' signatures listed. AR Item No. 24, at 1.

<sup>8</sup> AR Item No. 31 is an undated document with no postmark, so it is unclear when it was drafted or sent.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

Petitioners assert Ben Franklin is a small community, for whom the Ben Franklin Postal Office carries great historical significance *Petition, at 1*; Participant Statement, at 1. Petitioners oppose the closing of Ben Franklin, arguing the closure's negative effect on: (1) convenience; (2) accessibility for the elderly; and (3) effect on the community. *Petition, at 1*. In Julie Lovell's subsequent statement, she alleges that the Postal Service failed to: (4) respond to community concerns; (5) make the Final Determination available; and (6) notify customers of their appeal rights. Participant Statement, at 2-3.

#### B. The Postal Service

On August 1, 2011, the Postal Service filed complete Administrative Record and Final Determination to Close Ben Franklin, and on September 8, 2011, filed Comments in lieu of an answering brief permitted by Order No. 765. In its filings, the Postal Service argues that: (1) it has met all procedural requirements of 39 U.S.C. § 404(d); (2) will provide rural route, delivery, and retail service options, the former will alleviate the need to travel to a post office; and (3) will save an estimated \$35,901 annually, by closing Ben Franklin. AR Item No. 47, Postal Comments, at 3-4.

### IV. STANDARD OF REVIEW AND APPLICABLE LAW

#### A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: arbitrary, capricious, an abuse of discretion,

or otherwise not in accordance with the law; without observance of procedure required by law; or unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>9</sup>

#### B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

#### V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

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<sup>9</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Ben Franklin Post Office.

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Ben Franklin Post Office, and the Postal Service Comments, the Public Representative concludes that the Postal Service has not performed in accordance with the law.

While the Postal Service has identified convenient alternative access to postal services and provided sufficient appellate information to customers; it has (1) failed to provide a justifiable reason for closure apart from Ben Franklin's deficit; (2) effectively thwarted community participation and input in the discontinuance process; and (3) inflated the estimated savings resulting from Ben Franklin's closure. The Public Representative concludes that in light of the foregoing reasons, the decision to close Ben Franklin should be remanded.

#### A. The Postal Service's Decision Should Be Remanded

##### 1. The Decision To Close Ben Franklin Has Not Been Adequately Justified

In its Final Determination, the Postal Service relies upon a decline in workload and revenue for its decision to discontinue Ben Franklin. AR Item No. 47, at 2. The Postal Service's inability to articulate another reason for the closure separate and apart from Ben Franklin's poor economic earnings, calls into question whether Ben Franklin's discontinuance is promulgated solely on its operational deficit. Without any other reason directly stated or implied by reference, the determination to discontinue service at Ben Franklin's should be remanded.

Title 39 clearly states that a small post office shall not be closed solely for running a deficit. 39 U.S.C. §101. While the Postal Service adequately considers viable alternatives to service, it fails to articulate a reason for closure that is neither a cause nor symptom of Ben Franklin's operational deficit, leaving the Public Representative to question if the closure is actually based on an improper policy decision in violation. Title 39 U.S.C. §101(b), states:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. **No small post office shall be closed solely for operating at a deficit**, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities. (emphasis added).

The Postal Service states it will save \$35,901, annually, by closing Ben Franklin. AR Item No. 47 at 8. For the last three fiscal years, Ben Franklin revenues have steadily declined: \$10,529 for FY 2008 (27 revenue units); \$7,163 for FY 2009 (19 revenue units); and \$6,355 for FY 2010 (17 revenue units). AR Item No. 18, at 1; Item No. 47, at 2. Ben Franklin's revenues have dwindled to the extent that its \$3,600 rent has consumed approximately 50% of the revenues for each of the last two years. Ben Franklin's expenses far outweigh its net profits. The Postal Service cites Ben Franklin's declining revenue, low workload, stagnant population, and postmaster vacancy as if they are four distinct reasons for Ben Franklin's discontinuance. *Id.* They are not. It is illogical and deceiving to portray these problems as independent of Ben Franklin's deficit problem when, in reality, they are three causes and a symptom thereof.

Despite having shown viable alternatives exist to serve Ben Franklin customers, the Postal Service's improper basis for closing Ben Franklin renders these alternatives moot. The presence of access alternatives is insufficient to alleviate or validate the Postal Service's flawed foundation upon which its decision is based. In the absence of any other expressed reason for discontinuing service, the Postal Service's closure of Ben Franklin constitutes a violation of 39 U.S.C. §101(b), and requires its decision be remanded.<sup>10</sup>

## 2. The Postal Service Failed to Provide Meaningful Opportunity for Community Input

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<sup>10</sup> While it appears Congress drafted 39 U.S.C. §101(b) to shield small less profitable postal facilities, its expressed limitations may become problematic as Postal Service closures increase. The irony of section 101(b) is that it protects those small facilities running a deficit, but leaves those that are marginally profitable more vulnerable to closure.

Title 39 U.S.C. §404 requires the Postal Service to afford the community an opportunity to present their views regarding a proposal to close a post office within their community. 39 U.S.C. § 404(b)(l). However, the facts surrounding the February 23, 2011, public meeting show the Postal Service fails to provide such an opportunity to Ben Franklin customers outside of previously distributed questionnaires. Through poor scheduling and not properly responding to basic questions at the February 23, 2011, public meeting, the Post Office deprives Ben Franklin customers of a meaningful opportunity to provide valuable customer input during the review phase of the discontinuance process.

a. Poor Scheduling Of Public Meeting

The deliberate scheduling of the Ben Franklin's public meeting in the middle of a weekday afternoon in the middle of the week, indicates the Postal Service had no intention of soliciting public participation in its discontinuance review. The meeting was held from 3:00 to 4:00 p.m., on a Wednesday. This is a day and time when most of Ben Franklin's working customers are at their respective places of employment.<sup>11</sup> It is therefore not surprising that only 19 customers were in attendance. AR Item No. 24. The Postal Service does not offer an explanation for why it chose this day and, more importantly, this time to hold a community-wide meeting organized to solicit public participation, but its decision to do so speaks volumes.

b. Failure To Satisfactorily Respond To Customers

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<sup>11</sup> As discussed, *infra*, most of Ben Franklin's working customers work outside of Ben Franklin, Texas, as there are no businesses within the town limits. AR Item No. 22.



In addition to poor scheduling, the lack of responsiveness on the part of the Postal Service representatives is a cause for unease. According to petitioner Julie Lovell, the Dallas District Discontinuance Coordinator (Discontinuance Coordinator) and Manager of Post Office Operations (Manager of Operations) imply they are unable to answer even the basic questions posed to them by the 19 Ben Franklin customers. Participant's Statement, at 2-3. Specifically, when customers ask how the Postal Service calculated the workload figures, the Discontinuance Coordinator responded, "I do not have this information." Participant Statement, at 3. When customers ask what increase in workload hours or reduction of business hours would alleviate the problem, the Discontinuance Coordinator responds, again, that "she [does] not know."<sup>12</sup> Finally, when a frustrated customer asks what information she does know, the Discontinuance Coordinator chooses to remain silent for the remainder of the meeting, refusing to answer more questions. *Id.*

The lack of response from the Postal Service representatives is most disconcerting given the Discontinuance Coordinator and Manager of Operations are the two individuals whose roles require them to be familiar with the details surrounding Ben Franklin and who are supposed to know the answers to community specific questions. In fact, it is the Discontinuance Coordinator who initiates and conducts the discontinuance review of Ben Franklin; completes the Post Office Closing or Consolidation Proposal Fact Sheet, Form 4920; completes the Log of Post Office Discontinuance Actions; and provide the majority of information included in the Proposal, in which the workload hours are calculated and cited as a key factor supporting the proposed closure of Ben Franklin. AR Item No. 1, 18, 36, and 44. It is

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<sup>12</sup> *Id.* It is plausible that the Postal Service does not to make information concerning altering workload hours and calculations public. However, this was not what the Discontinuance Coordinator communicated. If such information is to remain non-public, it is more in line with the Postal Service's transparency objective for its representatives to say so, rather than ostensibly claim not to know or have such information when they do. The Public Representative opines, given the fact that insufficient workload hours are often cited as a cause for discontinuance, any and all information surrounding them should be imparted to the community so the community may be involved in a more productive conversation concerning its post office closing.

also surprising that the Manager of Operations, who states she is the “manager responsible for all Post Offices in [the] area,” does not field the questions her colleague does not answer. It is the Manager of Operations who signs the customer notice of the proposed change in service, stating the reasons for the review and inviting to public to this public meeting, and reviews and responds to the customer questionnaires. AR Item No. 21, at 1; See AR Item No. 22; Item No. 26, at 1.

A review of the Administrative Record will shows that between the two of them, the Discontinuance Coordinator and Manager of Operations are the Postal Service’s leading local officials involved in Ben Franklin’s discontinuance process, and responsible for drafting, collecting, and providing the data that makes up the Administrative Record. The Questionnaire Summary and the Postal Service Customer Community Meeting Analysis, submitted as records of their responses to the community’s concerns, contain no responses specific to Ben Franklin, despite the specific questions from customers. See, AR Item No. 23, at 2-3; Item No. 25, at 1-2. In fact, these documents show, at best, that the Postal Service’s responses are highly generalized as if selected from pre-authorized boilerplate. *Id.*

The Postal Service’s inappropriate scheduling of the public meeting and failure to provide substantive responses to customers’ questions, evidence that it had with no intention of soliciting customer input for the purpose of determining if closure was appropriate. The fact that the postal representatives fail to adequately respond to Ben Franklin customer’s specific inquires, and the Discontinuance Coordinator decision to handle frustrated community members by deliberately ceasing to communicate with them, ultimately thwarted Ben Franklin’s customers’ opportunity to learn about, present informed views, and actively participate in the discontinuance review process.<sup>13</sup>

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<sup>13</sup> Subsequently, the Administrative Record includes two letter responses from the Dallas District Discontinuance Coordinator dated March 31 and April 4, 2011, respectively. AR Item No. 38, at 7-8. In the response letters, the Discontinuance Coordinator refuses to meet again with members of the community, does not address the concerns stated in the customers’ letters, and responds, “As I have responded at the community meeting, we provided multiple opportunities for input.” *Id.* Not only is this statement inaccurate, the questionnaires were the only opportunity other than the public meeting for Ben Franklin customers to comment on Ben Franklin’s discontinuance; but such a statement by the Postal

For the foregoing reasons, the Public Representative submits that the procedures followed in this case for public involvement do not serve the broader interest of fostering public confidence in the fairness of post office closings. The Commission has recognized that the failure to provide customers with a meaningful opportunity to comment on proposed post office closings fosters the "appearance that seeking customer comment is merely an afterthought" and, as such, only devalues customer input.<sup>14</sup> It should come as no surprise when, as here, customers react negatively to the discontinuance process. Participant Statement, at 2.

Whether or not the procedural deficiencies in this case warrant a remand to the Postal Service, the Commission should, at a minimum, remind the Postal Service of the Commission's prior admonition that the procedures for obtaining public participation in the discontinuance process need improvement.<sup>15</sup> The goal should not merely be public participation, but meaningful public participation.

### 3. The Estimated Savings From Ben Franklin Are Inflated

The Postal Service estimates closing Ben Franklin will result in annual savings of approximately \$35,901. AR Item No. 47 at 6. While \$3,600 of this amount constitutes the annual rent, the majority of these savings are attributable to the salary and related benefits of the former postmaster, who was promoted on February 13, 2010. AR Item No. 47 at 8.<sup>16</sup>

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Service clearly communicates that any post February 23, 2011, customer input is not considered, no matter how valuable it may be.

<sup>14</sup> See, Comments of the United States Postal Regulatory Commission on Proposed Amendments to Post Office Consolidation and Closing Process, May 2, 2011, at 3-4 (Commission Comments).

<sup>15</sup> See, e.g., Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 3, 2010 at 48-56.

<sup>16</sup> The landlord of the Ben Franklin, Texas, property leased by the Postal Service offered to lower the monthly rent from \$300 to \$100, for the duration of the current contract, i.e., through December 31, 2013. AR Item No. 16 at 15. This would result in annual savings of \$2,400. There is no evidence the Postal Service responded to the landlord.

Since the former postmaster was not separated from service, he or she still receives a Postal Service salary (presumably a higher salary, given the noted promotion), and is thus still a cost to the Postal Service. The Final Determination does not state the salary being paid to Ben Franklin's current non-career postmaster relief (PMR). *Id.* In fact, the Postal Service is quite ambiguous when it comes to the PMR, stopping short of stating whether it will separate the PMR from service or transfer the PMR to a nearby facility once Ben Franklin is closed. *Id.* Without more information, the actual net costs and savings are unknown.

Unless and until the Postal Service provides a justification for considering the postmaster and/or PMR's salary, and related benefits, to be a bona fide "savings" resulting from closure of Ben Franklin, the actual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.

## B. The Postal Service Has Met Some of The Requirements of 39 U.S.C. §404

### 1. Convenient Alternatives To Access

The Postal Service has met the requirements of 39 U.S.C. §404, concerning accessibility to and quality of services, by identifying two nearby postal facilities, Roxton and Pecan Gap, that will provide services to Ben Franklin customers.

Several Ben Franklin patrons expressed concern that Roxton (5.4 miles) and Pecan Gap (5.3 miles) are too far away. However, many acknowledge daily travel outside of Ben Franklin is necessary for banking, shopping, employment, as there are no businesses in Ben Franklin, Texas. See, AR Item No. 22. Consequently, a number of Ben Franklin patrons checked "Yes" in their questionnaires to "pass[ing] another Post Office during business hours while traveling to or from work, or shopping, or for personal needs." *Id.* In addition, there are no schools in Ben Franklin, Texas, requiring Ben Franklin residents to commute to Cooper (8.4 miles away) or Pecan Gap for their educational needs. AR Item No. 4, at 2; Item No. 16. In light of these facts, the 5.4 or 5.3 mile commute to Roxton or Pecan Gap, respectively, is comparatively short and fails

to illustrate a practical travel inconvenience for Ben Franklin customers. Others expressed concern that they did not travel, had no means of travel, or did not travel frequently enough to obtain regular access to Roxton or Pecan Gap. See, AR Item No. 22. The Postal Service has sufficiently assured consumers they will have access to postal retail, rural route, and carrier service from Roxton. AR Item No. 47, at 8. The latter will provide delivery and provide retail services to senior citizens and others in cases of hardship. *Id.* It is an added benefit that the post office box rental rates at both Roxton and Pecan Gap are less expensive than at Ben Franklin. AR Item No. 15, at 2.

Petitioners claim that the Postal Service did not inform Ben Franklin customers that Pecan Gap was on the Expanded Access Study list to be reviewed for possible closure. Participant Statement, at 2. While this may be true, it does not constitute any intended ill will or misstep on the part of the Postal Service. The Access Study list and subsequent Expanded Access Study list were not made public until July 2011, as part of the Postal Service's request to review its proposed Retail Access Optimization Initiative,<sup>17</sup> well after the February 23, 2011, public meeting, and the June 30, 2011, posting of the Final Determination to close Ben Franklin. AR Item No. 47 at 8. In fact, when asked directly at the public meeting on February 23, 2011, whether the Pecan Gap or Roxton postal facilities could be closed next, the Postal Service gave a truthful reply, "the Postal Service is looking at all offices." AR Item No. 25. While it is understandable that Ben Franklin residents may be upset over the potential closure of Pecan Gap, they will, for the time being, retain a sufficient alternative access to retail and delivery services from Roxton.<sup>18</sup>

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<sup>17</sup> USPS-LR-N2011-1-2 - Retail Access Optimization Discontinuance Candidate Facility List, July 27, 2011.

<sup>18</sup> It fairs poorly for Postal Service customer relations if candidate facilities for closure are known and still offered by the Postal Service as alternative access sites to patrons of a closing facility. Under such circumstances, it may behoove the Postal Service to offer more than one alternative access facility, as it did in this case; expressly make customers aware that any proposed alternative access facility may be considered for discontinuance in the future; or simply inform customers of the temporary status of the alternative.

## 2. Consideration Of The Closure's Effect On The Community

The Postal Service has considered of the effect of Ben Franklin's closing on the community, yet determined that closing Ben Franklin was the optimal choice. 39 U.S.C. 404(d)(2)(i). Petitioners are concerned that the Postal Service's decision to close Ben Franklin disregards the important role the Ben Franklin Post Office has in the community. See, Petition, at 1. Petitioners state that in addition to being the town meeting place and a community information source since 1854, Ben Franklin serves as a landmark for the entire area as it sits on the second most continuous route in Texas. *Id.* Participant Statement, at 1. Petitioners and others in the community view Ben Franklin as an official symbol of recognition that the town is a distinct and valuable community. The Administrative Record and Final Determination show that the Postal Service has taken the emotional impact of the loss of Ben Franklin under consideration. In spite of this impact, the Postal Service has decided to close Ben Franklin, since doing so results in savings, that when taken cumulatively, may assist in reducing the Postal Service's massive debt and enable postal services to be maintained throughout Delta County.

## 3. Adequate Appellate Information Provided

The Petitioner claims the Postal Service did not make a written version of the Final Determination available to Ben Franklin patrons and did not inform patrons of their right to appeal the Postal Service's decision to close Ben Franklin. The available evidence points to the contrary.

There is a written letter from the District Discontinuance Coordinator to the Officer in Charge (OIC) at Ben Franklin instructing that the Proposal be posted at Ben Franklin from March 30 through May 31, 2011. AR Item No. 31, at 1. The last page of the Proposal includes a paragraph informing Ben Franklin customers that instructions on the how to appeal the Postal Service's decision will be forthcoming in the Final Determination. AR Item No. 33, at 8.

The Final Determination was posted July 1, 2011, at both Ben Franklin and Roxton. AR Item No. 47, at 1, 9. As required, it is in writing, addresses the considerations enumerated in 39 U.S.C. §404, and made available to persons served by the post office. 39 U.S.C. § 404(d)(3). As the Proposal alluded, the Final Determination contains a paragraph on its penultimate page that informs Ben Franklin customers of their appeal rights, instructs them of the timeframe within which an appeal must be filed, and that an appeal is to be filed with the Postal Regulatory Commission. AR Item No. 47 at 8. Even assuming Petitioners did not see the written appellate information provided by the Postal Service, this did not harm or prejudice them, as they properly filed a timely appeal.<sup>19</sup>

## VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Ben Franklin Post Office should be remanded.

Respectfully Submitted,

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<sup>19</sup> The Petitioner did not file a motion to suspend the closure when she filed her appeal. It is unclear whether she and the other Ben Franklin customers were informed of this option and the need to file such a motion with their original petition. 39 CFR §3001.114(a). Section 3001.114(a) of the Commission's regulations requires that an "[a]pplication for suspension ... shall be made at the time of the filing of a petition for review ...." *Id.* The Postal Service's notification of the right to appeal lacks detailed guidance that ought to be provided to a layperson undertaking a highly legalistic venture.